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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|--------------------------------|------------------------------|------------------|
| 09/890,681 | 01/10/2002 | Paulo Vicente Da Silva Marques | MCW-003US | 6722 |
| 959 | 7590 | 10/01/2003 | EXAMINER HOFFMANN, JOHN M | |
| LAHIVE & COCKFIELD 28 STATE STREET BOSTON, MA 02109 | | | ART UNIT 1731 | PAPER NUMBER |

DATE MAILED: 10/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|-------------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/890,681 | DA SILVA MARQUES ET AL. | |
| | Examiner | Art Unit | |
| | John Hoffmann | 1731 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-12,14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-12, 14-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claim 3-5, 10-12 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3-5: there is no antecedent basis for "the junction of the at least one inlet port and the respective torch conduit" this makes the claims indefinite. The main reason this makes the claims indefinite is because claim 1 has been amended to require that the torch conduits are now part of the inlet ports; previously the torch conduits were separate from (i.e. connected to) the inlet ports. Since the conduit is part of the port, there is no junction of the port and the conduit. Also, there is confusing antecedent basis for "the respective torch conduit" because there is more than one torch conduit. Claims 3-5 refer to "at least one inlet port". If there is more than one inlet port, then there would be more than one respective torch conduit.

Claim 11: there is no antecedent basis for "the other inlet ports." It is unclear if there must be a plurality of other inlet ports.

Claim 10: it is unclear if claim 10 requires there to be "other inlet ports". It seems that the claim requires that there be a radial plane which contains inlet ports.

Re claims 12 and 14 see the previous Office action. It is unclear if claim 12 requires at least 3 ports.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 5 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

There is no support for claim 5 - wherein the port has a conduit as required by amended claim 1. And with the expansion chamber is upstream of the mixing region. Examiner could find no explicit or implicit support, and such seems to be impossible.

Claim Rejections - 35 USC § 103

Claims 1, 3-4, 6-11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Jung 4576622.

Figure 4 shows the invention: 104 and 102 together is one inlet port (which has a torch conduit 102). 108 and 106, is another port. 100 is the third port which also has a conduit, itself is the conduit. Alternatively, 100 is another conduit which has no port. The rest of the limitations are clearly met, except for the 45 degree angle.

The drawing shows an angle of approximately 45 degrees. However, there is no indication that the drawing is made to scale. It would have been obvious to have the

conduit at 45 degrees because that is what Jung, shows, and because it would be an easy angle to create it at: between the two other pipes 100 and 108. Alternatively, it is note that the junction between 104 and the hemispherical section at the top of the burner, is essentially a hole/circle which is itself a port. The angle this circle would make with the axis is $= 90 - (\text{angle of the tube } 104)$. So, if the angle between 104 and 100 is 50 degrees, then the angle between the circle/port and tube 100 would be 40 degrees. Therefore, as long as the angle 104 is between 5 and 85, the claim language is met.

Claim 3 is met because one can consider the hemisphere region at the top of the burner to be part of the conduit, and thus the hemisphere region is itself the junction.

Claim 4, is met because one can consider the only 102 to be the torch conduit and the junction is where the two things overlap. That is, the junction is coincident with /identical to the conduit. This is because the conduit is never separate from the port.

Claims 6-9 and 15 are method of use limitations which don't further limit the structure.

Claim 10: it would have been obvious to have another Jung process/burner, so that one can make twice as many preforms at the same time. Claim 10 do not require that the "any other inlet ports" be related to the ports of the burner of the claim. The plane of the first burner differs from the plane of the second additional burner.

Claim 11: It would have been obvious to have multiple Jung burners/processes so as to make as much fiber/profit as possible. It would have been further obvious to arrange the process stations in one or more rows so that one can more easily locate

and navigate, as compared as to them being oriented askew at all different locations, helter skelter.

Allowable Subject Matter

Claims 12 and 14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The prior art does not disclose the other "ports" at a second angle.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

It is argued that claim 1 has been amended to incorporate the limitation of claim 13. This is true, however the limitations of claim 12 (an intervening claim) were not also incorporated into claim 1.

Conclusion

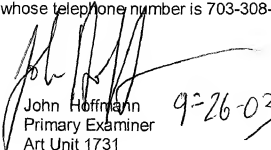
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Hoffmann whose telephone number is 703-308-0469. The examiner can normally be reached on Monday through Friday, 7:00- 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Griffin can be reached on 703-308-1164. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.


John Hoffmann
Primary Examiner
Art Unit 1731

9-26-03

jmh